

BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant: RONALD JOHN ROSENBERGER

Application No.: 10/822,049 Art. Unit: 1733

Filing Date: 04/10/2004 Examiner: Steven D. Maki

Title: SCENTED TIRES

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Ronald J. Rosenberger

(Name of Appellant, assignee, or Registered Representative)



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APPELLANT'S CORRECTED BRIEF ON APPEAL UNDER 37 CFR 41.37

Dear Sir:

In conjunction with the submitted and timely Notice of Appeal filed on December 8, 2006 and Brief on Appeal, filed February 8, 2007, Appellant submits the following Corrected Brief on Appeal under 37 CFR 41.37, now due March 5, 2008, in response to the Notice of Non-Compliant Appeal Brief, mailed February 5, 2008.

The present Appeal Brief includes (i) a statement of the status of all of the claims; (ii) status of the claims of each subsequent amendment to the final rejection; (iii) a concise

statement of each ground of rejection; (iv) a correct copy of the appealed claims as appendix.

The current Appeal Brief includes, *inter alia*, a statement of the status of the claims under 37 CFR.37(c)(1)(iii) (Page 3), a statement of the status of each amendment under 37 CFR.37(c)(1)(iv) (Page 3), a concise statement of each ground of rejection under 37 CFR.37(c)(1)(vi) (Page 4), an argument under separate heading for each ground of rejection on appeal under 37 CFR.37(c)(1)(vii) (Pages 5-12), and a correct copy of the appealed claims under 37 CFR.37(c)(1)(viii) (Appendix A).

Real Party in Interest (37 CFR 41.37(c)(1)(i))

The Appellant-inventor, Ronald Rosenberger is the owner of entire interest in the above-identified patent application as the sole Appellant, and which interest has not been assigned.

Related Appeals and Interferences (37 CFR 41.37(c)(1)(ii))

There are no related appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal and accordingly there are no decisions to provide copies herewith.

Status of Claims (37 CFR 41.37(c)(1)(iii))

Pending original and previously amended claims 1-2, 4-10, 12-13 and 16-17 including independent claim1, all stand rejected and are on appeal. Claims 3, 11, 14-15, and 18-20 were previously canceled.

Status of Amendments (37 CFR 41.37(c)(1)(iv))

The Examiner entered the Amendment under 37 CFR 1.115, filed June 14, 2006, in response to the non-final office action dated March 14, 2006. The Examiner did not enter an Amendment under 37 CFR 116, mailed on December 8, 2006, in response to the final Office Action mailed September 8, 2006, including the revised Amendment filed, February 5, 2007, in response to the Notice of Non-Compliant Amendment mailed January 4, 2007,

as indicated in an Advisory Action of record. The Examiner maintained his rejections as indicated in the Advisory Action. Accordingly, the claims stand for the present Appeal in the form they were amended and canceled in the Amendment and Response filed June 14, 2006 to the non-final Office Action of March 14, 2006.

Summary of Claimed Subject Matter (37 CFR 41.37(c)(1)(v)

Pending claims 1-2, 4-10, 12-13 and 16-17 cover particular aspect of the present invention, which provides, e.g., in claim 1, a vehicle tire comprising voids comprising removable inserts, o-rings or plugs that comprise at least one scent or fragrance that is released by friction, heat or wear when the vehicle with the vehicle tire is driven. The following table provides each independent claim and its corresponding support in the specification.

| <u>Independent claim</u> | <u>Specification Support</u> |
|--|---|
| 1. A vehicle tire, comprising at least one removable insert, o-ring or plug provided in at least one void contained adjacent to the outside surface of at least one of a tread, a belt or a ply of said vehicle tire, said insert, o-ring or plug comprising at least one that is released when said tire is used in a vehicle for driving, said | Claim 1 as filed: A vehicle tire comprising at least one novelty scented rubber compound, and/or at least one novelty scented non-rubber component, where said novelty scented rubber compound and/or said novelty scented component comprises at least one novelty scent or fragrance, where said novelty scented rubber compound and/or said novelty scented non-rubber component gives off a unique aroma when said tire is at rest, where said novelty scented rubber compound and/or said novelty scented non-rubber component gives off a unique aroma when said tire is in normal use due to friction, heat buildup, and wear; and where normal wear of said vehicle tire exposes fresh surface area of said novelty scented rubber compound, and/or said novelty scented non-rubber component, wherein said unique aroma comprises a salient, distinctive, and marketable feature of said vehicle tire. (Page 13, 2 nd full paragraph) The novelty plug or insert is intended to be installable on the outside surface of a tire. While theoretically the novelty plug or insert should be installable anywhere on the outside surface of the tire, it is apparent that the most optimal situation would place the novelty plug or insert comprising erodible material in the tread of the tire, with the novelty plug or insert exposed and visible on |

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|--|---|
| release of said scent or fragrance due to friction, heat buildup, or wear. | <p>the tire's tread. Such an embodiment would permit friction and heat build-up, as well as wear, that would stimulate the release of the novelty scent or fragrance. For this reason, it is preferred that the outside surface of the novelty plug or insert be flush with the outside tire surface, and not be recessed in any way. The novelty plug or insert can be installed on the disclosed vehicle tire that comprises novelty scented rubber compound and/or novelty scented non-rubber component, and/or pheromones, and/or wear warning oriented rubber compound and/or wear warning oriented non-rubber components, or it may be installed on tires that do not comprise any one or all of the abovementioned attributes</p> <p>(Page 14, first full paragraph) The novelty plug or insert can comprise any shape, design, size or depth. For example, the novelty plug or insert may appear in the tire as being circular in shape, a quarter inch wide and a quarter inch deep; or, shaped like the State of Texas, an inch across; or, can comprise a lined design, such as a Celtic symbol an inch and a half high. Also, the novelty plug or insert can comprise any embodiment of an "O" ring around the tread circumference or tire wall diameter of the vehicle tire. Also, a given "O" ring could even be elastic or semi-elastic, and perhaps have qualities similar to a rubber band or an elastic hair band that can be stretched on or off the tire, and can be easily replaced at will.</p> |
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Grounds of Rejection to be reviewed on Appeal (37 CFR 41.37(c)(1)(vi))

1. The Examiner rejects claims 6-9 and 16 under 35 USC 112, second paragraph, as being indefinite.
2. The Examiner rejects claim 10 under 37 CFR 175(c), asserting that the claim's adding "removable" as a dependent feature broadens the claim.
3. The Examiner rejects claims 1, 4-10, 12-13 and 16-17 under 35 USC section 102 (b) as being anticipated by Great Britain 584 (GB 2,243,584).
4. The Examiner rejects claims 1, 4-10, 12-13 and 16-17 under 35 USC 103(a) as unpatentable over Great Britain 584 in view of Korea (2004029611), Japan 873 or German 356
5. The Examiner rejects claims 1, 5-10 and 16-17 under 35 USC 103(a) as unpatentable over Japan 873, in view of one of French 013, Canada 958 or Japan 908.
6. The Examiner rejects claim 2 under 35 USC 103(a) as unpatentable over Japan 873, in view of one of French 013, Canada 958 or Japan 908, and further in view of Berliner
7. The Examiner rejects claims 4 and 13 under 35 USC 103(a) as unpatentable over Japan 873, in view of one of French 013, Canada 958 or Japan 908, as applied above, and further in view of French 340.
8. The Examiner rejects claim 12 under 35 USC 103(a) as unpatentable over Japan 873, in view of one of French 013, Canada 958 or Japan 908, as applied above, and further in view of Mellet et al (WO 01/43958).

Arguments (37 CFR 41.37(c)(1)(vii))

All of the claims, including independent claim 1 and dependent claims 4-10, 12-13 and 16-17 are argued together.

Argument 1 under (37 CFR 41.37(c)(1)(vii))

The Examiner objects to claims 6-9 and 16 under 35 USC 112, second paragraph, as being indefinite. The Examiner asserts that the use of the term “groove, channel or device: is confusing, and suggests change to “void comprises”.

The Examiner objects to claims 6-9 and 16 under 35 USC 112, second paragraph, asserting that the use of the term “groove, channel or device: is confusing, and suggests change to “void comprises”. In response to the final Office Action to reduce issues on Appeal, but which response was not entered by the Examiner, Appellant deleted this term, and clarified that the insert, o-ring or plug comprises a particular shape, design, directional orientation, size, or depth, rendering this objection moot. Appellant would be willing to so amend the claims to remove this rejection.

This obviousness rejection should be reversed as being in error.

Argument 2 under (37 CFR 41.37(c)(1)(vii))

The Examiner rejects claim 10 under 37 CFR 175(c), asserting that the claim’s adding “removable” as a dependent feature broadens the claim.

The Examiner objects to claim 10 under 37 CFR 175(c), asserting that the claim’s adding “removable” as a dependent feature broadens the claim. In response to the final Office Action to reduce issues on Appeal, but which response was not entered by the Examiner, Appellant deleted this term, rendering this rejection moot. Appellant would be willing to so amend the claims to remove this rejection.

This obviousness rejection should be reversed as being in error.

Argument 3 under (37 CFR 41.37(c)(1)(vii))

The Examiner rejects claims 1, 4-10, 12-13 and 16-17 under 35 USC section 102 (b) as being anticipated by Great Britain 584 (GB 2,243,584).

The Examiner rejects claims 1, 4-10, 12-13 and 16-17 under 35 USC section 102 (b) as being anticipated by Great Britain 584 (GB 2,243,584). The Examiner asserts that this

reference discloses a vehicle tire having grooves and removable wear indicators inserted therein, and that the wear indicator gives off an inherent scent. The Examiner asserts that Britain 584 discloses the other features of the dependent claims.

The Examiner notes that terms such as novelty, unique aroma and salient, distinctive and marketable features of the scent were deleted from claim 1. Appellant points out that the Examiner, in the Office Action of March 14, 2006, rejected all of these terms as indefinite. Since the Examiner has now used the removal of these terms, in hindsight, to attempt to read the claims on the prior art, Appellant amended the claims to clarify that the scent or fragrance is incorporated as a scent or fragrance in a plug or insert to the vehicle tire, which claims the same invention as using the above terms which the Examiner has failed to consider patentable in claims under 35 USC 102, second paragraph. The amendments to the claims are fully supported by the priority specification, dated 4-17-03, e.g., as presented above as well as in the sentence preceding and including the first paragraph of the Description of the Invention section as follows:

Finally, a less invasive means for scenting a vehicle tire comprising a novelty plug or insert is disclosed.

DESCRIPTION OF THE INVENTION

The disclosed scented vehicle tire may be realized in myriad ways and combinations. Scent may be made apparent in the vehicle tire by incorporating novelty scent or fragrance in or on the rubber compound(s) comprising a given vehicle tire, in or on the any of the non-rubber components of a given tire, or on any combination of a given tire's rubber compound(s) and non-rubber components.

(Emphasis added.)

Appellant respectfully points out that the cited art fails to disclose, teach or suggest the use of an added scent or fragrance compound in a plug or insert that gives off the scent or fragrance when the vehicle tire is used but does not include the use of the scent as a tire wear indicator. The Examiner has improperly used hindsight to improperly assert that the claims are obvious over the cited references, which fail to provide any teaching or

suggestion or motivation to combine or interpret the cited references to provide the claimed invention:

Appellant respectfully points out that the references in themselves do not suggest or motivate the presently claimed combination, and the Examiner has failed to show how the general knowledge suggests the combination, as required by MPEP 706.02(k) and MPEP 2143.01, which also states that “the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art and not based on Appellant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP sections 2143–2143.03.” The Examiner has failed to show how the references or the state of the art specifically suggest the presently claimed combination.

MPEP 2143.01 cites “*In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-8 (Fed. Cir. 1998) (the combination of the references taught every element of the claimed invention, however, without a motivation to combine, a rejection based on a *prima facie* case of obviousness was improper.). The level of skill in the art cannot be relied upon to provide the suggestion to combine references. *Al-Site Corp. v. VSI Int’l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999) . . . The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990) . . . A statement that modifications of the prior art to meet the claimed invention would have been “ well within the ordinary skill of the art ” at the time the claimed invention was made’ ” because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). See also *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000)

This obviousness rejection should be reversed as being in error.

Argument 4 under (37 CFR 41.37(c)(1)(vii))

The Examiner rejects claims 1, 4-10, 12-13 and 16-17 under 35 USC 103(a) as unpatentable over Great Britain 584 in view of Korea (2004029611), Japan 873 or German 356.

The presently claimed invention covers vehicle tires comprising removable plugs or inserts that comprise at least one perfume or fragrance that is given off due to wear, heat or friction when the tire is driven on, which invention is not suggested or taught by the cited references, alone or in combination. Additionally there is no motivation to combine the teachings of the cited references to provide the presently claimed combination. Britain 584 fails to suggest an incorporated scent or fragrance given off due to friction, use or heat and Korea's use of encapsulated fragrance as a wear indicator to be activated at the time the tire needs to be replaced does not make up the deficiencies of Britain 584. Japan 873 teaches perfume-sealed particles that are incorporated into the rubber composition of the tire and not into a plug, insert or o-ring as presently claimed. German 356 discloses a wear indicator that is activated when the tire needs to be replaced as in Japan 873 which may emit a noise, smoke or smell. German 356 fails to suggest that the "smell" can be emitted whenever the tire is exposed to normal use, as presently claimed.

Accordingly, the cited references fail to disclose, teach or suggest each and every element of the present claims. The present claims distinguish over the cited reference(s). This obviousness rejection should be reversed as being in error.

Argument 5 under (37 CFR 41.37(c)(1)(vii))

The Examiner rejects claims 1, 5-10 and 16-17 under 35 USC 103(a) as unpatentable over Japan 873, in view of one of French 013, Canada 958 or Japan 908, for the reasons presented in the Office Action.

The presently claimed invention covers vehicle tires comprising removable plugs or inserts that comprise at least one perfume or fragrance that is given off due to wear, heat or friction when the tire is driven on, which invention is not suggested or taught by the cited references, alone or in combination. Additionally there is no motivation to combine the teachings of the cited references to provide the presently claimed combination.

Japan 873 teaches perfume-sealed particles that might be incorporated into the rubber composition of the tire. Japan 873 fails to teach or suggest a scent or fragrance added to a tire plug or inserts presently claimed. French 013 teaches bike tire with inner and outer non-slip tread patterns with trough that can be colored. Canada 958 discloses tire with replaceable insert to replace worn tread. Japan 908 discloses o-rings to add in the grooves between the treads to add non-black color to decorate the tire.

The presently claimed invention covers vehicle tires comprising removable plugs or inserts that comprise at least one perfume or fragrance that is given off due to wear, heat or friction when the tire is driven on, which invention is not suggested or taught by the cited references, alone or in combination. Additionally there is no motivation to combine the teachings of the cited references to provide the presently claimed combination.

Accordingly, the cited references fail to disclose, teach or suggest each and every element of the present claims. The present claims distinguish over the cited reference(s). This obviousness rejection should be reversed as being in error.

Argument 6 under (37 CFR 41.37(c)(1)(vii))

The Examiner rejects claim 2 under 35 USC 103(a) as unpatentable over Japan 873, in view of one of French 013, Canada 958 or Japan 908, and further in view of Berliner, for the reasons presented in the Office Action.

The presently claimed invention covers vehicle tires comprising removable plugs or inserts that comprise at least one perfume or fragrance that is given off due to wear, heat or friction when the tire is driven on, which invention is not suggested or taught by the cited references, alone or in combination. Additionally there is no motivation to combine

the teachings of the cited references to provide the presently claimed combination.

Japan 873 teaches perfume-sealed particles that might be incorporated into the rubber composition of the tire. Japan 873 fails to teach or suggest a scent or fragrance added to a tire plug or insert as presently claimed. French 013 teaches bike tire with inner and outer non-slip tread patterns with trough that can be colored. Canada 958 discloses tire with replaceable insert to replace worn tread. Japan 908 discloses o-rings to add in the grooves between the treads to add non-black color to decorate the tire. Berliner's suggestion of adding pheromone to perfume does not make up for the deficiencies of the other references and there is no suggestion in Berliner to combine its teaches for use in a scented tire.

Accordingly, the cited references fail to disclose, teach or suggest each and every element of the present claims. The present claims distinguish over the cited reference(s). This obviousness rejection should be reversed as being in error.

Argument 7 under (37 CFR 41.37(c)(1)(vii)

The Examiner rejects claims 4 and 13 under 35 USC 103(a) as unpatentable over Japan 873, in view of one of French 013, Canada 958 or Japan 908, as applied above, and further in view of French 340, for the reasons presented in the Office Action.

The presently claimed invention covers vehicle tires comprising removable plugs or inserts that comprise at least one perfume or fragrance that is given off due to wear, heat or friction when the tire is driven on, which invention is not suggested or taught by the cited references, alone or in combination. Additionally there is no motivation to combine the teachings of the cited references to provide the presently claimed combination.

Japan 873 teaches perfume-sealed particles that might be incorporated into the rubber composition of the tire. Japan 873 fails to teach or suggest a scent or fragrance added to a tire plug or insert as presently claimed. French 013 teaches bike tire with inner and outer non-slip tread patterns with trough that can be colored. Canada 958 discloses tire with replaceable insert to replace worn tread. Japan 908 discloses o-rings to add in the grooves between the treads to add non-black color to decorate the tire. French 340

suggesting (according to the Examiner) colored o-rings or grooves for a particular color scheme or colored rubber or tearable cell wear indicator (not presently claimed) fails to make up for the deficiencies of the primary references.

Accordingly, the cited references fail to disclose, teach or suggest each and every element of the present claims. The present claims distinguish over the cited reference(s). This obviousness rejection should be reversed as being in error.

Argument 8 under (37 CFR 41.37(c)(1)(vii))

The Examiner rejects claim 12 under 35 USC 103(a) as unpatentable over Japan 873, in view of one of French 013, Canada 958 or Japan 908, and further in view of Mellet et al (WO 01/43958), for the reasons presented in the Office Action.

The presently claimed invention covers vehicle tires comprising removable plugs or inserts that comprise at least one perfume or fragrance that is given off due to wear, heat or friction when the tire is driven on, which invention is not suggested or taught by the cited references, alone or in combination. Additionally there is no motivation to combine the teachings of the cited references to provide the presently claimed combination.

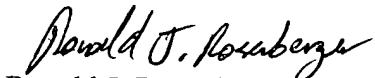
Japan 873 teaches perfume-sealed particles that might be incorporated into the rubber composition of the tire. Japan 873 fails to teach or suggest a scent or fragrance added to a tire plug or insert as presently claimed. French 013 teaches bike tire with inner and outer non-slip tread patterns with trough that can be colored. Canada 958 discloses tire with replaceable insert to replace worn tread. Japan 908 discloses o-rings to add in the grooves between the treads to add non-black color to decorate the tire. Mellet et al teaches colored covers that fit into grooves between tread of a bike tire. Mellet fails to make up for the deficiencies of the other references.

Accordingly, the cited references fail to disclose, teach or suggest each and every element of the present claims. The present claims distinguish over the cited reference(s). This obviousness rejection should be reversed as being in error.

Conclusion

In view of the above arguments and evidence of record, Appellants request that the Examiner's rejections be reversed and the case remanded to the Examiner for allowance.

Respectfully submitted,



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Date: March 4, 2008

CLAIMS ON APPEAL

1. (Previously Amended) A vehicle tire, comprising at least one removable insert, o-ring or plug provided in at least one void contained adjacent to the outside surface of at least one of a tread, a belt or a ply of said vehicle tire, said insert, o-ring or plug comprising at least one scent or fragrance that is released when said tire is used in a vehicle for driving, said release of said scent or fragrance due to friction, heat buildup, or wear.
2. (Previously Amended) The vehicle tire of claim 1, wherein said at least one insert, o-ring or plug further comprises at least one pheromone.
4. (Previously Amended) The vehicle tire of claim 1, wherein said vehicle tire further comprises at least one wear warning component comprising at least one of a wear warning scent, visible wear warning non-colored or colored smoke, or visible wear warning powder that optionally leaves a residue, wherein the intensity or timing of the release of said wear warning component is proportional to the wear level of said vehicle tire.
5. (Previously Amended) The vehicle tire of claim 1, wherein said insert, o-ring or plug is color coordinated with said scent or fragrance, or wherein the color of said insert, o-ring or plug is incongruous with said scent or fragrance.
6. (Previously Amended) The vehicle tire of claim 1, wherein said void, insert, o-ring or plug comprises a particular shape, design, directional orientation, size, or depth, or a groove, channel, or crevice.
7. (Previously Amended) The vehicle tire of claim 6, wherein said vehicle tire further comprises at least one void anywhere on the outside surface of said tire, said void providing for placement or replacement of at least one additional insert, o-ring or plug comprising at least one of a fragrance, a scent, a pheromone or a wear warning component.
8. (Previously Amended) The vehicle tire of claim 6, wherein said vehicle tire is selected from a vehicle tire for at least one of an automobile, a sport utility vehicle, a minivan; a heavy machinery work vehicle, a truck, a farm equipment

vehicle, an aircraft; a bus; a motorcycle, a scooters, a motorbike; an all-terrain vehicle, a golf cart, a go cart; a bicycle, a unicycle, a tricycles, or an exercise bike.

9. (Previously Amended) The vehicle tire of claim 6, wherein at least one of said at least one void can accommodate two or more of at least one of said plug, o-ring or insert.

10. (Previously Amended) The vehicle tire of claim 1, wherein said plug, o-ring or insert:

- a. comprises at least one color
- b. is inserted, installed or secured in said void
- c. is removable from said at least one void of said vehicle tire; or
- d. comprises an embodiment of an "O" ring around the circumference or diameter of said vehicle tire.

12. (Previously Amended) The vehicle tire of claim 1, wherein said insert, o-ring or plug further comprises at least one visual aspect selected from a reflective component, a refractive component, a sparkling component, a shining component, a holographic component, a jewel-like component, a luminescent component, a pearlescent component, a fluorescent component, or a glow-in-the-dark component.

13. (Previously Amended) The vehicle tire of claim 4, wherein said wear waring component comprises at least one wear warning plug, o-ring or insert is oriented in said vehicle tire such that deployment occurs at a predetermined level of wear of said vehicle tire, and wherein said wear warning plug, o-ring or insert comprises: 1) at least one wear warning composition comprising at least one wear warning scent, visible wear warning colored or non-colored smoke, or wear warning powder; or, 2) at least one capsules or microcapsule comprising said at least one wear warning composition, said capsule or microcapsule rupturing with exposure due to wear, thereby releasing said wear warning composition, wherein the level of said release of said wear warning composition is proportional to the wear level of said vehicle tire.

16. (Previously Amended) The vehicle tire of claim 7, comprising wherein said plug, o-ring or insert, provided for placement in said void, comprises semi-solids that

are introduced into said void using at least one method selected from pouring, pumping, injecting, or spraying.

17. (Previously Amended) The vehicle tire of claim 1, wherein said plug, o-ring or insert comprises two or more sections, wherein at least one said at least one color; at least one scent or fragrance; at least one pheromone; at least one visual aspect; or at least one wear warning component.

Evidence Appendix Under 41.37(c)(1)(ix)

NONE.

There is no related evidence under 37 C.F.R. 1.130, 1.131, or 1.132 being filed with this Brief on Appeal.

Related Proceedings Appendix Under 41.37(c)(1)(x)

NONE.

There are no related proceedings pursuant to 41.37(c)(1)(ii).